IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4343 of 2002

DATE OF DECISION:01.05.2007

Mohinder Singh Jain .....Appellant

Versus

Rajiv Gupta & Ors. .....Respondents

CORAM:- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present:- Shri Rajinder Goyal, Advocate
for the appellants.

Shri A.P. Bhandari, Advocate
for the respondents.

****

This is defendants' Regular Second Appeal against the judgements and decree passed by both the Courts below, whereby, the suit of the plaintiffs for mandatory and permanent injunction directing the defendants to remove the symptoms and material of water tank and slabs shown in the red colour in the site plan attached with the plaint and further directing them not to interfere in the enjoyment of disputed wall A B, which is exclusively owned by the plaintiffs, was decreed.

I have heard counsel for the parties and gone through the judgements and decree passed by both the Courts below.

In this case, the dispute is about a wall A B shown in the site plan (Exhibit P-9). The plaintiffs claim that the disputed wall A B is exclusively owned by them, whereas on the other hand, defendants claim their exclusive ownership on the said wall. Both the Courts below after taking into consideration the evidence led by the plaintiffs i.e. the registered sale deed Ex.P7, site plan attached to the plaint Ex.P9 as well as the statement of the vendor and another evidence came to the conclusion that

the wall A B exclusively belongs to the plaintiffs and the defendants have raised the construction on the said wall unauthorisedly. Before the trial Court, the appellants did not lead any evidence to prove that the wall A B is exclusively owned by them though before the first appellate Court, the appellants have tried to change their stand by taking the plea that the wall A B is a common wall but no such plea was taken in the written statement. The contention of the appellants was rejected by the first appellate Court and the findings of fact recorded by the trial Court on the issue was affirmed.

In my opinion, the findings recorded by both the Courts below is a finding of fact, which cannot be interfered in the second appeal. No substantial question of law is also involved in this appeal.

Dismissed.

May 01, 2007 **(SATISH KUMAR MITTAL)**
pooja **JUDGE**